4198.

SUPREME COURT OF THE UNITED STATES.

No. 208.

THE UNITED STATES, APP'TS,

vs.

RAMON RODRIGUEZ AND FRANCISCO ALVISO.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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Office of the board of commissioners to ascertain and settle private land claims in the State of California.

Be it remembered, that on the twentieth day of April, Anno Domini one thousand eight hundred and fifty-two, before the commissioner to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Ramon Rodriguez et al., for the place named Agua Puerca and Francas," was presented, and ordered to be filed and docketed with No. 209, and is as follows, to wit: (Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *May* 27, 1852.

In case No. 209, Ramon Rodriguez et al., for the place "Agua Puerca," the deposition of Wm. Bocle and Joseph Majors, witnesses in behalf of the claimants, taken before Commissioner James Wilson, were filed. (Vide 4 and 5 of this transcript.)

SAN FRANCISCO, *Nov.* 28, 1854.

Case No. 209, on motion of the counsel for the claimants, with the consent of the United States law agent, was ordered to be placed at the foot of the 3d class cases on the trial docket.

SAN FRANCISCO, *January* 8, 1855.

In the same case, the deposition of Manuel Castro, a witness on behalf of the claimants, taken before Commissioner Alpheus Felch, with documents marked exhibit No. 1 A. F., annexed thereto, was filed. (Vide page 7 of this transcript.)

Case No. 209 was submitted without argument and taken under advisement by the board.

SAN FRANCISCO, *Jan.* 30, 1855.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim. (Vide page 21 of this transcript.) And the following order was made to wit: (Vide page 24 of this transcript.)

Petition.

To the honorable the board of commissioners for the adjudication of California land claims.

Ramon Rodriguez and Francisco Alviso, native Californians, respectfully showeth, that Governor Micheltorano granted to them,

in the year 1843, a certain tract of land in Santa Cruz county, in the State of California, called Agua Puerca and las Francas, bounded or described in the petition and original grant herewith presented, and contains about one league, more or less; that your memorialists have been in the peaceable enjoyment of said land ever since the date of the grant, and that they know of no person or persons who pretend or can pretend to question their right and title to the said described land; therefore, your memorialists pray your honorable board to cause a patent in fee to issue to them for the said tract or parcel of land, in virtue of the authority vested in your honorable board, by the act approved 3d March, 1851; and your memorialists will ever pray, &c.

JNO. PARROTT,
Attny. for Claimant.

Filed in office April 30th, 1852.

GEO. FISHER, *Sec.*

Deposition of Wm. Bocle.

No. 209.

Office of the board of land commissioners for California.

SAN FRANCISCO, *May* 26, 1852.

On this day, before me, James Wilson, one of the commissioners for ascertaining and settling private land claims in California, came Wm. Bocle, a witness produced in behalf of the claimants, Roman Rodriguez and Francisco Alviso, whose petition is No. 209 on the docket of said comrs.; and after being duly sworn, testified as follows:

The law agent of the United States was duly notified and attended.

William Bocle, a witness produced and examined at the request of the claimant, deposes and says: My name is William Bocle; I have lived in California about 29 years; I have for the quarter part of the time been living at the mission of Santa Cruz; am well acquainted with Roman Rodriguez and Francisco Alviso; I have known them *I have known them* about 26 years; I know they obtained a grant from Governor Micheltorano of a tract of land called Haro Agua Puerca de las Francas, in the year 1843; that since that date they have been in undisputed possession of the same; have stock on it, houses and fences; I do not know if they ever received judicial possession; the land or extent of the grant I do not know, but it may be a little more than one league; I know they have occupied the land, and have had peaceable and undisputed possession ever since the grant was given them; Rodriguez and Alviso built their houses on said rancho immediately after they got the grant of the land; they put their

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cattle on at the same time, and have occupied the same ever since.

In answer to interrogations by Geo. W. Carley, Esqr., law agent United States, the deponent says: The rancho called Haro lies immediately on the sea coast; it was once claimed by the mission of Santa Cruz, and occupied by the mission for pasturing stock; the mission took their stock all of about 1836 or 1837; *their* was no lands cultivated on said rancho until quite recently, within a year or two; before that time it had been occupied generally for pasturage.

his
WILLIAM ✕ BOCLE.
mark.

May 26, 1852.

Subscribed and sworn to before me.

JAMES WILSON,
Commissioner.

Filed in office May 24, 1852.

GEO. FISHER, *Sec.*

Deposition of Joseph L. Majors.

No. 209.

Office of the board of land commissioners for California.

SAN FRANCISCO, *May* 26, 1852.

On this day, before me, James Wilson, one of the *of* Commissioners for ascertaining and settling private land claims in California, came Joseph L. Majors, a witness produced in behalf of the claimants, Ramon Rodriguez and Francisco Alviso, whose petition is No. 209 on the docket of said commissioners; and after being duly sworn, testified as follows:

The law agent of the United States was duly notified and attended.

Deposition of Joseph L. Majors.

Joseph L. Majors, a witness presented by claimant, deposes and says, viz: My name is J. L. Majors; I have lived in California eighteen years, and for greater part of the time at or near the mission of Santa Cruz; I am well acquainted with Roman Rodriguez and Francisco Alviso; I have known them since 1835; I know they obtained a grant of land from Gen'l Mihelterano, sometime in 1843, called Haro; that the rancho contains about one league, more or less; that judicial possession that I know of was not given; but Rodriguez and Alviso did build on the rancho a house and put stock upon the *the* same; they have always been respected in their right, and have never heard of any person claiming or pretending to claim any portion of the land; I live near to the petitioners, Rodriguez and Alviso; I know that

they built their houses on said rancho immediately after getting the grant, within one year, and put occupants in their houses at the time, and put their cattle on the rancho aforesaid, and have continued to have occupants in their houses, and cattle and stock on their said rancho ever since.

Interrogation by Geo. W. Coeley, Esq., L. A. United States. Deponent says: The rancho now prayed for by the petitioners, lies immediately on the sea coast; the land, of which this rancho is a part, was formerly claimed by the mission of Santa Cruz; there was stock on the lands belonging to the sd. mission, and it was occupied for that purpose by said mission, up as late as 1836 or 1837; the last stock of the mission which was upon this rancho, as, I think, was taken away by the administrator of the mission in the year 1837, as I now remember.

J. L. MAJORS.

May 26, 1852.

Subscribed and sworn to before me.

JAMES WILSON,
Commissioner.

Filed in office May 26, 1852.

GEO. FISHER, *Sec.*

Deposition of Manuel Castro.

No. 209.

United States land commission.

SAN FRANCISCO, *Jan. 8th*, 1855.

On this day came before Commissioner Alpheus Felch, Manuel Castro, a witness on behalf of the claimant, Ramon Rodriguez, in case No. 209, who, after being duly sworn, deposed as follows, his evidence being interpreted by the interpreter of the board:

Questions by Gen'l James Wilson, att'y for claimant:

1st question. Please state your name, age, and place of residence?

Answer. My name is Manuel Castro; my age thirty-three years, and residence Monterey county, California.

2nd question. Are you acquainted with the handwriting of Manuel Michelterano and Manuel Jimino; if yea, please look on the document now here presented to you, and marked exhibit No. 1, with the initials A. F., and which was filed in the case April 30, 1852, and state whether the signatures thereto are the true and genuine signatures of said Michelterano and Jimino, respectively?

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Answer. I am acquainted with the handwriting of both the persons named, and have seen them both write; the signatures of said document are their true and genuine signatures; the body of the document is in the handwriting of Francisco Adice.

MANUEL CASTRO.

Mr. McKnew, the law agent, was present at the taking of this testimony.

Subscribed and sworn to before me, this eight day of January, 1855.

ALPHEUS FELCH, *Commissioner.*

Filed in office Jan. 8, 1855. GEO. FISHER, *Sec.*

Espediente promovido por el Ciudadano Ramon Rodriguez en solicitud del parage conocido con el nombre de el "Agua Puerca y las Francas."

324.

Sello tercero. Un peso.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias para el año de mil ochocientos cuarenta y tres.

[SEAL.] MICHELTORENA,
MANUEL CASTANARES.

MONTEREY, *Oct.* 26 *de* 1842.

Ynfll. el sr. srio del despacho oyendo previamente a la parte 1a. posedora y lo que mas merese para evacuarlo.

MICHELTORENA.

Exmo. sor. gobr.: Ramon Rodriguez y Francisco Alviso Mejuanos por nacimiento y vecinos de la villa de Branciforte ante V. E. con el debido respeto y como mas halla lugar en derecho representan y dicen que en las inmediaciones de Sta. Cruz halla un terreno conovido con el nombre de Agua Puerca y las Trancas; de cuyo sitio acompañan el diseño, éste fue concedido á Sra. Da. Maria Buelna hace siete ú ocho años; y teniendo los esponentes un numero bastante de Ganado Vacuno y Caballar con que cubrir dicho sitio creen de justicia poder denunciarlo como valdio por hallarse en absoluto abandono el tiempo mencionado que hace le fue concedido a su referido dueño. Por tanto A. V. E. rendidamente suplican se sirva mandar tomar las averiguaciones que jusque necesarias al efecto y si fuesen de conformidad espedirles el titulo de propriedad qe. solicitan de lo que recibiran gracia y merced jurando no ser de malicia y lo necesario.

Como. Monterey, Octre. 25 de 1843.

RAMON RODRIGUEZ,
FRANCO. ALVISO.

Como dispone el exmo. sor. gobernador dirijase la presedente instancia á Da. Maria Ylaria Buelna para que conteste sobre el contenido en ella y concluido que sea, buelva para cumplir con lo demas que previene el superior decreto de fha de hoy.

MANUEL JIMENO.

Como apoderado en el presente asunto de Doña Maria Ylaria Buelna pago presente al Gobierno que el terreno que se ha denunciado puede consederserles á las personas que lo pidan pr. que mi poderante—

[Here follows a map or plan; see original, page 10.]

lo decirte del derecho que tiene á dho terreno por no poderlo ocupar y en fé de bondad lo firmó con dos testigos de asistencia.

Monterey, 31 de Obre. de 1843.

JOHN RODRRICK,
JORGE ALLEN,
JORGE KINLOCK.

Exmo. sr. gobernador: Segun manifiesta Da. Maria Ylaria Buelna, desistiendo del derecho que tenia, al terreno que se habia concedido parece que no hay inconveniente ninguno para que se les trasfiera el dominio á los senores que lo denuncian, siempre que lo considere V. E. combeniente.

Monterey, 31 de Obre. de 1843.

[SEAL.] MANUEL JIMENO.

MONTEREY, *Octe.* 31 *de* 1843.

Practicados los informes antecedentes y en vista de lo que resulta practiquese como opina el S. Srio del despacho de este supremo gobo. departamental.

MICHELTORENA.

MONTEREY, 2 *de Nobre. de* 1843.

Vista la peticion con que da principio este espediente los informes que preceden y la renuncia del otro de Da. Ylaria Buelna con todo lo demas que se tubo presente y ver convino de conformidad con las leyes y reglamentos declaro á Ramon Rodriguez dueño del terreno que solicita. Librese el correspondiente despacho, tomese razon en el libro respectivo.

OFFICE OE THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of Cala., and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory or department of upper California, by virtue

of the power vested in me by law, do hereby certify that the seven preceeding and hereunto annexed pages of tracing paper, numbered from one to seven inclusive, exhibit a true and accurate copy of a certain document now on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this ninth day of January, 1855.

JOHN C. HAYS,
U. S. Surveyor Genl. for Cala.

Filed in office Jan'y 9th, 1855.

GEO. FISHER, *Sec'y.*

Record of proceedings had by the citizen Ramon Rodriguez, soliciting the place known by the name of El Agua Puerca y las Francas.

324.

Translation of expediente.

Stamp third. One real.

Provisionally authorizes by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year eighteen hundred and forty-three.

MICHELTORANO, [SEAL.]
MANUEL CASTANARES.

MONTEREY, *Oct. 25th*, 1843.

Let the secretary of despatch report, after having previously heard the first party in possession, and taken other information which he may think necessary to give his report.

(Signed) MICHELTORANO.

Most Excellent Governor: Roman Rodriguez and Francisco Alviso, Mexicans by birth, and residents of the towns of Brancofute, before your excellency with due respect and in the best form of law, appear and say, that in the neighborhood of Santa Cruz there is a tract of land known by the name of Agua Puerca y las Francas, the sketch of which they herewith present. This tract was granted about seven or eight years ago to Fra. Da. Hario Buelna, and your petitioners having a sufficient number of neat cattle and horses wherewith to occupy said tract, they think they have a right to denounce it as vacant, as it has been absolutely abandoned since the time it was granted; therefore, they humbly beseech of your excellency, that your excellency be pleased to take the information which you may think necessary to the purpose; and if satisfactory, that you be pleased to issue to them the

title in full property which they ask, in which they shall receive a favor, swearing that it is not malice as necessary.

Monterey, Oct. 25, 1843.

(Signed) RAMON RODRIGUEZ,
(Signed) FRANCISCO ALVISO.

As ordered by the most excellent governor, let the foregoing petition be referred to Da. Ma. Yario Buelna, in order that she may reply in relative to its contents, and this being done, let it be returned to comply with the order of the superior decree of this date.

(Signed) MANUEL JIMENO.

As agent in the present business of Da. Ma. Yario Buelna, I make it known to the government that the tract of land which has been denounced may be granted to the person who solicit it, inasmuch as my principal renounces whatever right she may have to said land, not being able to occupy it; and in testimony of truth, I sign it with two witnesses of my assistance.

Monterey, Oct. 31st, 1843.

(Signed) JORJE ALLEN.
(Signed) JNO. RODERICK,
(Signed) GEO. RENLOCK.

Most Excellent Governor: As Da. Ma. Yario Buelna says that she renounces her right to the land which had *which had* been granted to her, it seems that there is no obstacle whatever to grant the property to the gentlemen who denounce it, provided your excellency should consider it proper.

[SEAL.] (Signed) MANUEL JIMENO.
Monterey, Oct. 31st, 1843.

MONTEREY, *Oct.* 31*st*, 1843.

The foregoing information having been had, and in view of the result, let it be done as the secretary of despatch of this supreme departmental government thinks.

(Signed) MICHELTARANO.

MONTEREY, *Nov.* 2*nd*, 1843.

Having seen the petition with which this (expediente) record of proceedings begin the foregoing reports and the renouncement of her right of Da. Ma. Ylanio Buelna, with whatever else was thought proper to be seen, in conformity with the laws and regulations, I declare Roman Rodriguez owner of the tract of land which he solicits. Let the corresponding despatch be issued and let due note of it be taken in the respective book.

I, George Fisher, secretary to the board of U. S. land commissioners to settle private land claims in the State of California, do hereby certify that the foregoing is a true and correct translation

of a fac simile traced copy of an expediente filed in case No. 209 in the docket of said board, Ramon Rodriguez et al. claimants, for the place called Agua Puerca de las Francas, which expediente is filed Jan. 9th, 1855.

In testimony whereof, I have hereunto signed my name at office, in the city of San Francisco, Cal., this 9th of January, 1855.

GEO. FISHER, *Sec.*

Filed in office Jan. 9, 1855.

GEO. FISHER, *Sec.*

B.

Grant.

Sello tercero un peso.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

[SEAL.] MICHELTORENA,
MANUEL CASTAÑARES.

Manuel Micheltorena, general de brigada del ejercito Mejicano, ayudante general de la plana del mismo, gobernador comandante genl. é ynspector del departamento de las Californias.

Por cuanto los Ciudadanos Ramon Rodriguez y Franco. Alvico, han pretendido pa. sus beneficios personales y el de sus familias el parage conocido con el nombre de Agua Puerca y las Francas colindante con el arroyo de las Francas, con el Agua Puerca, con el mar y con la sierra, practicadas previamente las diligencias y averiguaciones conservientes segun lo dispuesto pr. leyes y reglamentos; usando de las facultades que me son conferidas á nombre de la nacion Mejicana hé venido en concederles el terreno mencionado, declarandoles la propiedad de él por las presentes letras sujetandose á la aprovacion de la exma junta departamental y á las condiciones siquientes.

1°. Podra sercarlo sin perjudicar las travecias Caminos y servidumbres; lo disfrutaran libre y eschusivamente, destinandolo al uso y cultivo que mas les acomode, pero dentro de un año fabricaran Casa y estará habitada.

2°. Solicitaran del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites se pondran á mas de las mojoneras algunos arboles frutales, ó silvestres de alguna utilidad.

3°. El terreno de qe. se hace donacion es de un sitio de ganado mayor poco mas ó menos segun esplica el diseño respectiva. El juez que diere la posecion lo hará medir conforme á ordenanza

quedando el sobrante que resulte á la nacion para los usos convenientes.

4°. Si contraviniere á estas condiciones perdera su derecho al terreno y será denunciable por otro. En consequencia mando que sirviendoles de titulo el presente y teniendose por firme y valedero se tome razon de él en el libro respectivo y se entreque al interesado para su resguardo y demas fines. Dado en Monterey á dos de Noviembre de mil ochocientos cuarenta y tres.

MANUEL JIMENO, Sro.,
MANL. MICHELTORENA.

Queda tomada razon de este despacho en el libro respectivo a fs. 2 del libro de este año.

JIMENO.

Filed in office April 30th, 1852.

GEO. FISHER, *Sec'y.*

C.

Translation of grant "B."

Third stamp one dollar.

Provissionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year eighteen hundred and forty-three.

MICHELTORANO,
MANUEL CASTANARES.

Maratime custom-house of Monterey.

Manuel Micheltorano, brigadier general of the Mexican army, adjutant general of the staff of the same, governor, commander general and inspector of the department of the Californias.

Whereas citizen Ramon Rodriguez and Francisco Alviso have solicited for their personal benefit, and that of their families, the tract of land known by the name of Aqua Puerca y las Frances, bounded by the Arroyo de las Francas, by the Aqua Puerca, by the sea, and by the sierra, (ridge of mountains,) having previously taking the legal steps and investigations, in conformity with the provisions of the laws and regulations, by virtue of the powers conferred in me, in the name of the Mexican I have thought proper to grant them the above mentioned tract of land, declaring unto them the property thereof by these present letters, subject to the approval of the most ex'ct the departmental junta, and under the following conditions:

1st. *The* may fence it without prejudice to the crossings, roads, and servitudes; they will enjoy it freely and exclusively, appro-

priating it to the use or cultivation which may best suit them, but within one year they shall build a house, and it shall be inhabited.

2nd. *The* shall petition the respective judge to give them juridical possession in virtue of this patent, by whom the boundaries shall be marked out, at the limits of which, besides the land marks, they shall plant some fruit trees or wild ones of some usefulness.

3rd. The land of which donation is made consists of one square league (un sitio ganado mayor) a little more or less, as explained by the respective sketch. The judge who may give the possession shall have it measured according to ordinance, the surplus which may result remaining to the nation for its convenient purposes.

4th. If they contravene these conditions they will forfeit their right to the land, and it shall be denounced by any other person.

Consequently, I order that this patent serving them as a title, and being held as firm and valid, be entered in the corresponding book, and be delivered to the interested parties for their own security and other ends.

Given in Monterey on the 2nd of November, 1843.

MANUEL MICHELTORANO.

MANUEL JEMINO, *Sec'y.*

This patent has been entered in the corresponding book, folio 2, on the book of the present year.

JEMINO.

Filed in office April 30, 1852.

GEO. FISHER, *Sec'y.*

Opinion of the board, delivered by Commissioner Filch.

ROMAN RODRIGUEZ et al.
vs.
THE UNITED STATES.

For the place called Aqua Puerca y las Francas, in Santa Cruz county, containing one square league of land.

A grant of the land is presented and proved, made to the petitioners by Governor Micheltorano, under date of November 2nd, 1843. No approval by the departmental assembly appears to have been obtained.

Neither of the grantees ever lived on the place, and the proof shows that no cultivation was made on the premises until quite recently, and long since the cession of the country. It was occupied with cattle by their servants.

The grant is of one square league of land, a little more or less, with reference to the map annexed to the expediente, and juridi-

cal measurement is required to segregate it from the premises defined in the grant. The grantee failed to obtain the juridical measurement, and no specific portion of land has been assigned to them. The map renders no aid in the matter, for although the exterior boundaries within which the square league might be taken are clear enough, there is no scale of distances or other indication of the quantity contained in those limits.

It may contain one square league or fifty. We find nothing in the documents or maps to give us any knowledge on the subject. The proof contained in the depositions does not supply the defect. None of the witnesses are interrogated as to the boundaries of the rancho, or as to the limits of the land claimed by the grantee where their cattle ranged, and none of them give the quantity contained within the limits mentioned in the grant; a confirmation, with the description of the premises granted, as asked by the petitioners, might, for anything disclosed in this record, cover twenty instead of one square league of land. The burden of proof is the claimant in such cases, to show either first that he procured on the assignment to him by the proper officer of the quantity of land granted, with proper metes and bounds, according to the conditions of the title paper under which he claims; or, secondly, that the entire premises described in the grant as the area within which he might make his location, contained a quantity of land not exceeding that conceded to him. In this latter case there could be no surplus, and therefore the measurement might be dispensed with.

Under these *principals* uniformily applied by the commission, the claim of the petitioner is found wanting in the necessary proofs to sustain it, and an adverse decree must be entered. Rejected.

Filed in office January 30th, 1855.

GEO. FISHER, *Sec'y.*

Decree.

ROMAN RODRIGUEZ et. al.,
vs.
THE UNITED STATES. } 209.

In this case, on hearing the proofs and allegations, it is adjudged by the commissioners that the claim of the petitioners is not valid, and it is therefore decreed that their application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON, } *Commissioners.*

Filed in office Jan. 30, 1855.

GEO. FISHER, *Sec.*

Order.

And it appearing to the satisfaction of the board, that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court, for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

Office of the board of commissioners to ascertain and settle the private land claims in the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-four pages, numbered from 1 to 24, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board of the documentary evidence and of the testimony of the witnesses upon which the same is founded on file in this office, in case No. 209 on the docket of the said board. Ramon Rodriguez et al. are the claimants against the United States for the place known by the name of Agua Puerca and Francas.

In testimony whereof, I hereunto set my hand affix my private seal (not having a seal of office) at San Francisco, California, this twenty-first day of July, A. D. 1855, and of the independence of the United States of America the eightieth.

GEORGE FISHER, *Sec'y.*

Endorsed: Filed July 21st, 1855.

JOHN A. MONROE, *Clerk.*

Deposition of J. de la Cruz Rodriguez.

United States district court, northern district of California.

SAN FRANCISCO, *March 8th*, 1855.

On this day, before Wm. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Jose de la Cruz Rodriguez, a witness produced on behalf of the claimants, in case No. , being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 209 on the docket of the said board of commissioners,

and was duly sworn, and testified as follows, (his evidence being interpreted by J. J. Papy, a sworn interpreter:)

Present: D. S. Gregory, Esq., counsel for claimants, and the United States district attorney, by A. Glassell, Esq.

Question 1st. by claimants. What is your name, age, and place of residence?

Answer. Jose de la Cruz Rodriguez; 30 years of age; in Santa Cruz county, Cal.

Question 2nd. Are you acquainted with the tract of land situated in Santa Cruz county, Cal., called "Agua Puerca y las Francas, and claimed by Roman Rodriguez and Franciso Alviso?

Answer. I know said tract.

Question 3d. State the boundaries of said rancho, and how you know them?

Answer. Said tract is bounded on the north by the sierra or mountains, on the south by the ocean, on the east by the cañada of Agua Puerca, and on the west by the Canada de las Francas. I know those are the boundaries of the rancho, because I was born within a few miles of this tract, and have passed over it frequently, from north to south; it is about a league, and from east to west a little more than one league.

Question 4th. Has the said rancho been occupied; by whom; when; and state the general character of such occupation?

Answer. In March, 1844, it was first occupied by Roman Rodriguez and Francisco Alviso; they at this *this* time built corrals and houses, and they lived on it for two years after that time. Roman Rodriguez hired two men to stay upon it, and to take care of the place. It has remained in the possession of the claimants ever since, when *the* first went upon it; they cultivated 5 or 6 acres of land, and raised beans, pumpkins, watermellons, &c.

Cross-examined.

Question 1st. Have you any other means of ascertaining the correctness of the boundaries you have described than those you have already stated?

Answer. My information was derived from having passed frequently over the land, and hearing people say those were the boundaries.

JOSE DE LA CRUZ RODRIGUIZ.

Sworn to and subscribed this 8th day of March, 1855, before me.

WH. H. CHEVERS,
United States Commissioner.

It is hereby stipulated that the foregoing deposition be considered as evidence in the above entitled cause, and as though the

transcript and notice had been regularly filed before the taking of said deposition.

A. GLASSELL,
Acting U. S. Dt. Atty.
D. S. GREGORY,
Att'y for cla'mts.

8th March, 1855. San Francisco.

JNO. A. MUNROE, *Clerk.*

Endorsed: Filed July 21, 1855.

WM. H. CHEVERS, *Deputy.*

Deposition of Hiram D. Scott.

United States district court, northern district of California.

SAN FRANCISCO, *March 8th*, 1855.

On this day, before Wm. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Hirman D. Scott, a witness produced on behalf of the claimants, in case No. , being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 209 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: D. S. Gregory, Esq., counsel for the claimants, and the United States district atty., by A. Glassell, Esqr.

Question by claimants. What is your name, age, and place of residence?

Answer. Hiram D. Scott; 31 years of age; in Santa Cruz county, California.

Question 2d. Are you acquainted with the rancho claimed in this case called Agua Puerca y las Francas; if yea, where is it situated, and what are its boundaries?

Answers. I am acquainted with said rancho; it is situated in Santa Cruz county, California; it is bounded on the east by the arroyo, called "Agua Puerca." on the west by the cañada called "Las Francas," on the south by the sea, and on the north by the mountains.

Question 3d. How much land is embraced in these boundaries?

Answer. About one league.

Question 4th. State whether the said rancho has been occupied since you have known it, and if so, by whom, and in what manner?

Answer. It has been occupied ever since I have known it, which was in 1852; I lived on it and took care of Rodriguez's cattle, and cultivated a portion of it.

Cross-examined.

Question 1st. What are your means of ascertaining the above to be the boundaries of said rancho?

Answer. The adjoining rancho owners told me that those were the boundaries.

Question 2nd. What are your means of ascertaining the quantity of land embraced within those boundaries?

Answer. None, only but my judgment from living on it and passing over it very often; I have *know* interest whatever in the event of this claim.

HERMAN D. SCOTT.

Sworn to and subscribed this 8th March, 1855, before me.

WM. H. CHEVERS,
United States Commissioner.

It is hereby stipulated that the foregoing deposition of Herman D. Scott, should be considered as evidence in this case, the same as though the transcript and notice had been regularly filed before said deposition was taken.

A. GLASSELL,
Acting U. S. D. Att'y.
D. S. GREGORY,
Att'y for Claimants.

San Francisco, 8th March, 1855.

Endorsed: Filed July 21, 1855.

J. A. MUNROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Notice of appeal.

In the United States district court for the northern district of California.

RAMON RODRIGUEZ
vs.
THE UNITED STATES.

Claim for the place named "Agua Puerca y las Francas," situated in Santa Cruz county.

To the clerk of the said United States district court.

Please take notice that they, said appellants, intend to prosecute an appeal to the said United States district court, from the decision of the board of United States land commissioners to ascertain and settle private land claims in California, rejecting the claim of they, said appellants, the transcript of which said

case, was filed in the said clerk's office, on the 21st day of July, A. D. 1855.

D. S. GREGORY,
Att'y for Appellants.

San Francisco, 25th Sept., 1855.
Endorsed: Filed Sept. 25th, 1855.

JNO. A. MUNROE, *Clerk.*
By WM. H. CHEVERS, *Deputy.*

Deposition of Cornelia Perez.

United States district court, northern district of California.

RAMON RODRIGUEZ et al.
vs.
THE UNITED STATES.

SAN FRANCISCO, *Nov.* 27, 1855.

On this day, before me, Jno. A. Munroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Cornelio Perez, a witness produced on behalf of the claimants in case No. 250, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 209 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted D. Clinton Palmer, a sworn interpreter. Present: D. S. Gregory, att'ys for claimants, and the U. S. dist. attorney, by A. Glassell, Esq.

Question by claimants' counsel. What is your name, age, and place of residence?

Answer. Cornelio Perez; 44 years of age, and live in Santa Cruz county, California.

Question 2d. Are you acquainted with the tract of land called "Agua Puerca y las Francas," in Santa Cruz county; if yea, state its boundaries and the quantity of land within its boundaries?

Answer. I know said tract of land; it is bounded by "Las Francas" on one side, "Agua Puerca" on another, by the sea on another, and by the hills or mountains on the other; there is about one and one-half leagues of land between "Las Francas" and "Agua Puerca," and about one league or less between the sea and the mountains.

Question 3d. State whether or not said rancho has ever been occupied; if yea, by whom, when, and the character of such occupation?

Answer. It has, by Roman Rodriguez since 1843; his family lived there two years; in 1843 and 1844, he occupied the place with horses and cattle, and had his employes on the place, and cultivated a portion of said rancho, and still continues so to do.

Cross-examined by the U. S. dist. att'y.

What are your means of information as to what you have testified to?

Answer. I was born and brought up in that county; every two or three months I passed by the place; I have often left horses on the place to pasture; when they commenced to occupy the place, I was there and helped to cut the wood for and to make the corral; I have no interest whatever in the event of this suit.

his
CORNELIO ⋈ PEREZ.
mark.

Sworn to and subscribed before me, this 27th Nov., 1855.

JNO. A. MUNROE,
United States Commissioner.

Endorsed: Filed Nov. 27, 1855.

JNO. A. MUNROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition for review.

To the honorable the district court of the United States for the northern district of California.

RAMON RODRIGUEZ and FRANCISCO ALVISO, appellants,
vs.
THE UNITED STATES, appellee.
} No. 250.

Land commission docket No. 209. For the place called "Agua Puerca y las Francas."

The petition of Roman Rodriguez and Francisco Alviso, the above named appellants, respectfully shows, that heretofore, to wit, on the thirtieth day of April, A. D. eighteen hundred and fifty-two, they filed with the board of U. S. land commissioners, to ascertain and settle private land claims in California, their petition in writing, praying for a confirmation of their claim to a certain tract of land situate in the county of Santa Cruz, and State aforesaid, and in the said northern district of California, said tract of land containing about one league of land, more or less, and being known as rancho "Agua Puerca y las Francas;" for a more full description of which said tract of land and of your petitioners' title thereto, reference is now made to the said petition and to the transcript of the proceedings of said case had before the said commissioners. And your petitioners further show, that after hearing said petition, with the proofs and the argument of counsel thereon, the said board of commissioners did, on the thirtieth day of January, A. D. eighteen hundred and fifty-five, reject the said claim of your petitioners, and decree the same, and the title of your petitioners to the said land to be invalid;

that on the twenty-first day of July last past, a transcript of the record of the said cause was filed with the clerk of this court, which said transcript bears the date last aforesaid, by virtue of which the force of the statute in such case, provided an appeal was effected to this court; that on the twenty-fifth day of September, A. D. eighteen hundred and fifty-five, your said petitioners filed in this court a notice of their intention to prosecute said appeal; wherefore, *you* petitioners pray that the said decision of the said board may be reviewed and reversed, and that this honorable court may confirm their title to the said tract of land.

D. S. GREGORY,
Att'y for Appellants.

Endorsed: Filed Nov. 30, 1855.

JNO. A. MUNROE, *Clerk.*
By WM. H. CHEVERS, *Deputy.*

Answer.

The district court of the U. S., northern district of California.

THE UNITED STATES
vs.
RAMON RODRIGUEZ, appellants. } No. 250.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellants, and pray that the decision of the board of commissioners be affirmed, and that the said claim be declared and decreed to be invalid.

A. GLASSELL,
Asst. U. States Dist. Attorney.

Endorsed: Filed March 28, 1856.

JOHN A. MUNROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion by his honor Judge Ogden Hoffman.

RAMON RODRIGUEZ
vs.
THE UNITED STATES. } No. 250.

The claim in this case was rejected by the board, on the ground:

1st. That there was no proof of occupation and cultivation.

2d. No judicial measurement or possession.

3d. No proof of the boundaries or of the quantity of land included in the claim.

These objections have been met by additional testimony taken in this court. Jose de la Cruz Rodriguez deposes that he was born within a few miles of the rancho; that its boundaries are well known; that they are on the north the sierra; on the east the canada of Agua Puerca; on the south the ocean; and on the

west the Canada de las Francas. He also swears that in March, 1844, which was about five months after the grant, it was occupied by Rodriguez and Alviso, the grantees; that they built houses and corrals, and lived upon it for 2 years after that time, and that it has remained in their possession ever since. Cornelio Perez testifies to the same effect; and Hiram M. Scott not only testified to the generally recognised boundaries of the tract called "Agua Puerca y las Francas," but stated that the land contained within *there* is about a league. No question appears to have been made before the board as to the authenticity of the grant, and the case has been submitted to this court without argument on the part of the United States. The boundaries of the tract as sworn to by the witnesses, are the same as those mentioned in the grant, and the quantity of land contained within, appears to correspond with sufficient exactness to that mentioned in the condition, viz: one league, a little more or less, as explained by the sketch. I think, therefore, that the claim should be confirmed according to the boundaries mentioned in the grant, and as shown on the map. Delivered February 18, 1857.

Decree.

In the United States district court for the northern district of California.

ROMAN RODRIGUEZ, appellants,
vs.
THE UNITED STATES, appellee.

Stated term, February 18, 1857. Case docket No. 250. Transcript No. 209. Rancho "Agua Puerca y las Francas."

The above entitled cause coming on to be heard, at a stated term of this court, on appeal from the decision of the land commissioners to ascertain and settle private land claims in California, under an act of Congress approved March 3rd, 1851, on a transcript of the proceedings had before said commissioners, and of the evidence on which said decision was based, which said transcript has been duly filed in this court; and upon further evidence taken in said cause in this court, it is therefore considered, ordered, adjudged, and decreed by this court, that the said decision of the said commissioners rejecting the claim of said appellants for the land mentioned and described on said transcript, be and the same is hereby reversed, annulled, and set aside; and it is further ordered, adjudged, and decreed by the court, that the title of the said appellants, Roman Rodriguez and Francisco Alviso, for the said land so described, a copy of which said title is contained in the said transcript, is a good and valid title. The land of which confirmation is hereby made, is of the extent of one square league, a little more or less, is known as the rancho

"Agua Puerca y las Francas," and is situated in the county of Santa Cruz and State aforesaid, and is bounded on the south by the Pacific ocean, on the north by the sierras, on the east by the Arroyo or Puerca," and on the west by the Cañada de las Francas. Reference for further description to be had to the grant and sketch, (deseno,) copies of which are also contained in said transcript.

OGDEN HOFFMAN,
U. S. District Judge.

Endorsed: Filed February 18, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order granting appeal.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the second day of August, in the year of our Lord one thousand eight hundred and fifty-eight. Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
RAMON RODRIGUEZ and FRANCISCO ALVISO. } No. 250.

In this case, on application of P. Della Torre, Esqr., it is ordered that an appeal in behalf of the United States from the final decision of the court rendered in said court at the December (1856) term be, and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in said cause be sent to the Supreme Court of the United States without delay, and the appellants are ordered to serve the usual citation according to law.

OGDEN HOFFMAN,
U. S. District Judge.

Endorsed: Filed August 2d, 1858.
W. H. CHEVERS, *Clerk.*

Order substituting as att'y of record E. Stanly, Esq.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the fourth day of October, in the year of our Lord one thousand eight hundred and fifty-eight. Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
RAMAN RODRIGUEZ et. al. } No. 250.

In this case, on motion of Edward Stanley, Esq., it is ordered